

**REMARKS**

Claims 7-10, 14, 15, 19, 20, 24, 25, and 29 are pending by way of the present amendment, claims 7, 15, 20, and 25 having been amended and claims 11-13, 16-18, 21-23, and 26-28 canceled.

Submitted herewith is a Summary of the telephonic interview Applicants' representatives conducted with Examiner Patterson on June 30, 2003. Also submitted herewith is a Notice of Appeal of the outstanding Office Action.

**112 Rejections**

Claims 7-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

In claims 7, 15, 20, and 25, the rejected language "wt" was replaced with "weight" and "99 wt% of a polyester" was replaced with "99 weight % of a non-elastomeric polyester." The rejected language "when the film is put" was deleted. The rejected language "when the film is formed into a label" was amended as shown in the claims to include language of respective dependent claims. Accordingly, dependent claims 11-13, 16-18, 21-23, and 26-28 were cancelled. Additionally, in claim 7, the rejected language "the polyester elastomer" was replaced with "a polyester elastomer."

Claims 7-10 were further rejected for the language "adhesive retention" allegedly having insufficient antecedent basis. Claim 7 has been amended to include a definition for testing adhesive retention as suggested by the Examiner and described in the specification, page 31, for example.

Claims 20-24 were further rejected for the language "preform process" allegedly being indefinite. Claim 20 has been amended to include a definition of the preform process as described in the specification, page 31, for example.

Claims 25-29 were further rejected for the language "preform finish defect percentage" allegedly being indefinite. Claim 25 has been amended to include a definition for testing the preform finish defect percentage as described in the specification, pages 31-32, for example.

Therefore, the rejections are overcome.

103(a) Rejections

Claims 7-10, 13, 15, 18, 20, 23, 25, and 28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda (U.S. Patent No. 4,985,538) in view of Shibuya (U.S. Patent No. 5,270,390).

Applicants have carried out experiments to compare the polymer film produced by Fukuda with the claimed invention. Applicants first duplicated the results of Fukuda, as shown in Table 1 (attached). Table 1 shows a comparison between the results of Applicants' experiments performed on the polymer film of Fukuda ("Retaken data") and the results described in Fukuda ("Example 14 (or 15)"). As can be seen, the composition and physical properties of the retaken data are practically identical to those described in Fukuda, Example 14 (or 15), which verifies that Fukuda's film was accurately reproduced.

Applicants then compared the Fukuda results against claimed properties of the present invention, as shown in Table 2 (attached). Table 2 shows a comparison between the properties required by the claim elements (shrinkage, haze, and adhesive retention) in embodiments of the present invention ("Claim element") and the measurements taken from the retaken data ("Measurement in retaken data"). As can be seen, the retaken data of the examples of Fukuda shows that the shrinkage along the major axis after 5 seconds at 70°C is 49%, which is well outside the range of the claimed invention (10%-40%).

Therefore, claims 7, 15, 20, and 25, which recite the film having a shrinkage of about 10% to about 40% along its main shrinkage direction when put in water of 70°C for 5 seconds, and their dependent claims are patentably distinct over Fukuda.

Shibuya is directed to compositions containing 26-70 weight % of thermoplastic polyester resin, 10-30 weight % of polyester elastomer, and 20-44 weight % of vinylidene chloride resin. The vinylidene chloride provides improved gas barrier properties, but its heat shrinkability is deficient as compared to that in claims 7, 15, 20, and 25. Hence, the composition of Shibuya fails to satisfy the shrinkability conditions of the claimed invention. Therefore, these claims and their dependent claims are patentably distinct over Shibuya.

Neither Fukuda nor Shibuya, alone or in combination, teaches all of the elements of the claimed invention. Moreover, there would be no motivation to combine Fukuda with Shibuya because their teachings may be contrary to each other. For example, as a problem to be solved, Shibuya teaches enhancement of cold resistance by adding an elastomer to PVDC

shrinkage film having an oxygen gas barrier property. Whereas, Fukuda teaches providing warm water resistance, sufficient shrinkage, and solvent resistance for printing ink.

Furthermore, the base materials used by Fukuda and Shibuya are completely different. Additionally, neither Fukuda nor Shibuya teaches a preform finish property, shrinkage after preform, and adhesive retention of bonded portion as in the claimed invention.

Therefore, claims 7, 15, 20, and 25 and their dependent claims are patentably distinct over the combination of Fukuda and Shibuya.

Claims 11, 12, 16, 17, 21, 22, 26, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda in view of Shibuya and further in view of Amberg (U.S. Patent No. 3,760,968). These claims have been cancelled. Thus, the rejections are rendered moot.

Claims 14, 19, 24, and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fukuda in view of Shibuya and further in view of Yoshinaka (U.S. Patent No. 4,996,291).

The deficiencies of Fukuda and Shibuya are not corrected by Yoshinaka, since Yoshinaka fails to teach or suggest the shrinkage of about 10% to about 40% under the claimed conditions, as in claims 7, 15, 20, and 25. Accordingly, claims 7, 15, 20, and 25 and their dependent claims are patentably distinct over Yoshinaka, individually and in combination with Fukuda and Shibuya.

**Table 1**  
**Duplication of Results from Fukuda**

	<b>Example 14 (or 15)</b>	<b>Retaken date</b>
<b>Ratio of polymer components</b>	IV=0.70, Tg=66°C	IV=0.70, Tg=66°C
	TPA/IPA/EG/DEG 80/20//98/2(mol%)	TPA/IPA/EG=80/20//100 (mol%)
	Spherical silica 500ppm having an average grain diameter of 0.8μm	An average grain diameter of 1.5μm, silica 490ppm
<b>Conditions for Extrusion</b>	260 °C	260 °C
<b>Conditions for Drawing</b>		
Preheating		80 °C
Drawing	70 °C	70 °C
Thermosetting	Heating at 75 °C for 10 sec	75 °C
Drawing factor in the traverse direction	3.2	3.2
<b>Characteristics of Drawn film</b>		
Thickness	40μm	40μm
Shrinkage in hot water MD/TD (5 sec, 75 °C) (%)	-1/48	0/53
Birefringence	0.067	0.06
Neck in rate (%)	12	17
<b>Shrinkage characteristics</b>		
Adhesion	good	good
Crease	good	good
Total	good	good

**Table 2**  
**Comparison with Claim elements**

<b>Property</b>	<b>Claim element</b>	<b>Measurement in retaken data</b>
Shrinkage along the major axis in hot water	10-40% (70 °C, 5 sec)/ 50% or more (95 °C, 5 sec)	<u>70 °C: 49%</u>
Shrinkage along the orthogonal direction in hot water	10% or less (95 °C, 5 sec)	good
Film haze (at 50μm)	3 to 10%	5%
Adhesive retention of a label	95% or more (after shrinkage)	good

CONCLUSION

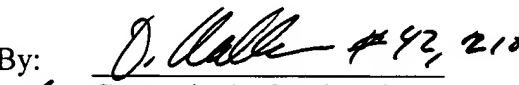
Applicants submit that the claims as presently written are allowable and an early and favorable action to that effect is respectfully requested.

The Examiner is invited to contact the undersigned at (202) 220-4200 to discuss any information concerning this application.

The Office is hereby authorized to charge the fee for an Extension of Time and any additional fees under 37 C.F.R. 1.16 or 1.17 or credit any overpayment to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully submitted,

Date: 6/30/03

By:   
Cassandra T. Swain, Ph.D.  
Reg. No. 48,361

KENYON & KENYON  
1500 K Street, N.W., Suite 700  
Washington, D.C. 20005  
(202) 220-4200 telephone  
(202) 220-4201 facsimile